

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES W. MARTIN,

Petitioner,

No. CIV S-99-0223 WBS GGH P

vs.

JAMES WALKER, Warden,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's March 28, 2008, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different court, or is “‘adequate to deserve encouragement to proceed further.’” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the imposition of a procedural
3 default in the following issue presented in the instant petition: whether the burden has been met
4 in proving that California's timeliness bar as set forth in, inter alia, Clark/Robbins is clearly
5 defined, well-established and consistently applied.

6 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
7 issued in the present action.

8 DATED: April 1, 2008

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10 WILLIAM B. SHUBB
11 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the
26 standard for issuance of a certificate of appealability is the same as the standard that applied to
issuance of a certificate of probable cause. Jennings, at 1010.